Office - Supreme Court, U
FILED
MAR 4 1955
HAROLD B. WILLEY, Cl

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 637

F. R. PELLICER, individually on behalf of himself as an employee of Railway Express Agency, Inc., a corporation, and representatively on behalf of similarly situated employees of Railway Express Agency, Inc., a corporation,

Petitioner,

versus

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, a voluntary unincorporated labor organization, RAILWAY EXPRESS AGENCY, INC., a corporation, and SILAS McKINNEY, individually as an employee of Railway Express Agency, Inc., a corporation, and as representative of similarly situated employees of Railway Express Agency, Inc., a corporation,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MARTIN J. PEARL,
Attorney for Petitioner,
204 Smith Building,
Jacksonville 2, Florida,

INDEX

	Page
Opinions below	2
Jurisdiction	2
Questions Presented	2
Constitutional Provision and Statute Involved	3
Statement of the Case	3
Reasons Relied on for Allowance of Writ	5
Conclusion	7
Appendix A--Opinion of U. S. Court of Appeals, Fifth Circuit	8
B--Judgment of U. S. Court of Appeals, Fifth Circuit	11

CITATIONS

Cases:

Steele v. *L. & N. R. Co.*, 323 U. S. 192, 65 S. Ct. 226, 89 L. Ed. 173 — 6

Statutes:

Railway Labor Act, 45 U. S. C., secs. 151, et seq. 2, 3 5, 6, 7

Constitutions:

United States Constitution, Amendment V 3, 6

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No.

F. R. PELLICER, individually on behalf of himself as an employee of Railway Express Agency, Inc., a corporation, and representatively on behalf of similarly situated employees of Railway Express Agency, Inc., a corporation,

Petitioner,

versus

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, a voluntary unincorporated labor organization, RAILWAY EXPRESS AGENCY, INC., a corporation, and SILAS McKINNEY, individually as an employee of Railway Express Agency, Inc., a corporation, and as representative of similarly situated employees of Railway Express Agency, Inc., a corporation,

Respondents.

PETITION FOR WRIT OF CERTIORARI

To the Honorable Justices of the Supreme Court of the United States:

Petitioner, F. R. Pellicer, individually on behalf of him-

self as an employee of Railway Express Agency, Inc., a corporation, and representatively on behalf of similarly situated employees of Railway Express Agency, Inc., a corporation, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above case on December 9, 1954, affirming judgment of the United States District Court for the Southern District of Florida entered on October 16, 1953.

Opinions Below

The memorandum opinion of the District Court is reported in 118 Fed. Supp. 254. (R. 71-79) The opinion of the United States Court of Appeals is reported in 217 F. 2d 205. (Appendix A, infra, pp. 8-10).

Jurisdiction

The judgment of the United States Court of Appeals was entered on December 9, 1954. (Appendix B, infra, p. 11) The jurisdiction of this Court is invoked under 28 U. S. C., sec. 1254(1).

Questions Presented

All members of a craft of railway employees are identical in their interest and merit in their employment, working under an existing collective agreement providing only one kind of seniority and only one method of acquiring it. All have the same right under the contract to acquire seniority status. Some have exercised this right, and have seniority; some have not, and have no seniority. The statutory exclusive bargaining representative of the craft amends the contract by creating in members without seniority, seniority rights antedating and superior to seniority rights of members already having seniority. The questions presented are:

1. Does the Railway Labor Act, construed in the

light of the due process clause of the Fifth Amendment of the Federal Constitution, condemn such amendment as unlawful because it discriminates, with detrimental retroactive effects upon accrued rights, among employees of the craft who are identical in their interest and merit in their employment?

2. If the first question be answered in the affirmative, does petitioner's complaint state a cause of action upon which relief can be granted?

Constitutional Provision and Statute Involved

This action involves the Fifth Amendment of the United States Constitution, which provides that no person shall be deprived of property without due process of law; and also involves the federal statute known as the Railway Labor Act (45 U.S.C., secs. 151, et seq.).

Statement of the Case

This is a class action for injunctive and other relief against the respondents named herein, begun in the Circuit Court of Duval County, Florida, by petitioner, F. R. Pellicer, as an employee of Railway Express Agency, Inc., an interstate rail carrier, acting on behalf of himself and others as employees of the company having seniority credit acquired and accumulated by them in the manner prescribed in successive collective agreements theretofore in effect between the respondent company and the respondent brotherhood as statutory collective bargaining representative of their craft. (R. 10)

The action was brought upon the complaint that, although all members of the craft representated are identical in their interest and merit in their employment and there is no basis for discriminating among them, the respondent statutory bargaining representative had violated its duty under the

Railway Labor Act by attempting to amend the seniority provisions of the then existing valid collective agreement with the company so as to allow retroactive seniority credit, antedating the seniority credit of petitioner and employees similarly situated with him in this action, to members of the craft who theretofore were employed under and bound by the same agreements but who had not exercised their right thereunder to acquire seniority in the manner prescribed therein, as a result of which many of said employees for whose exclusive benefit and advantage said amendment was made now appear on the seniority roster of employees as having more favorable seniority credit than petitioner and employees similarly situated with him; and by reason thereof said amendment constitutes nothing more than an attempt to sacrifice in an arbitrary, unlawful, and unconstitutional manner the seniority rights of petitioner and employees similarly situated with him, so as to allow retroactive seniority credit to employees who failed to avail themselves of their right to acquire seniority credit under the aforesaid valid agreements. (R. 10-62)

The amendment complained of was negotiated and entered into exclusively for the benefit and advantage of 532 colored employees; all other employees, white or colored, are expressly excluded from participating in any benefits thereunder. (R. 20)

Petitioner alleged irreparable damage and prayed an injunction to restrain the respondents from acting upon the amendment, and for other relief. (R. 25-26)

On joint petition of all respondents (R. 5-9) the cause was removed to the United States District Court for the Southern District of Florida, upon the ground that it is an action of which the District Courts of the United States have original jurisdiction, being a civil action arising under an Act of Congress regulating commerce (28 U. S. C., sec. 1337), as well as a civil action arising under the Constitution or laws of

the United States the amount in controversy of which exceeds the sum or value of $3,000 (28 U. S. C., sec. 1331).

Upon removal to the District Court respondents filed their respective motions to dismiss (R. 63-65) upon the ground that the complaint fails to state a claim upon which relief can be granted. On October 16, 1953, the District Judge entered final judgment granting the motions and dismissed the complaint without leave to amend and with prejudice (R. 66-67), and later filed a memorandum opinion. (R. 71-79) On November 16, 1953, petitioner appealed to the United States Court of Appeals for the Fifth Circuit (R. 68) and on December 9, 1954, the Court of Appeals rendered its opinion (Appendix A, infra, pp. 8-10) and entered judgment affirming the District Court. (Appendix B, infra, p. 11)

Reasons Relied on for Allowance of Writ

The Court of Appeals in this case has decided an important question of federal law which has not been, but should be, settled by this Court. It is appropriate to the exercise of this Court's certiorari jurisdiction that the question of law here presented be settled, because its resolution will have immediate importance far beyond the particular facts and parties involved. Collective bargaining under the Railway Labor Act governs the rates of pay, hours of service, seniority, and working conditions of practically every railway and air line employee in the United States. Collective bargaining likewise governs such matters where employees are subject to the National Labor Relations Act. The plans, hopes, and aspirations of all employees subject to these federal statutes are vitally affected by the latitude given or limitations placed upon a collective agent to discriminate among employees having identical interest and merit, when making collective agreements or changing the terms of an existing one. And where, as here, the statute is silent as to the latitude or limitations, the matter is left to judicial decision. It is of

widespread importance and in the public interest that an authoritative determination as to the power of a collective agent in such circumstance be made by this Court as the tribunal invested with that very important function.

This Court in the racial discrimination case of *Steele* v. *L. & N. R. Co.*, 323 U. S. 192, 65 S. Ct. 226, 89 L. Ed. 173, announced that it thought the Railway Labor Act imposes on the statutory representative of a craft at least as exacting a duty to protect equally the interests of the members of the craft as the Constitution imposes upon a legislature to give equal protection to the interests of those for whom it legislates. It is the contention of petitioner that in all cases of collective bargaining under the Railway Labor Act this same duty is imposed on the statutory representative and especially so where, as here, all the employees involved are identical in their interest and merit in their employment and there is no difference in the type of seniority or the work to be performed. If this be so, then the Court of Appeals has decided a federal question in a way in conflict with the above principle announced by this Court in the *Steele* case, supra, which should have been applied in deciding the case at bar.

This Court in the *Steele* case, supra, also said that the statutory power to represent a craft and to make contracts as to wages, hours and working conditions does not include the authority to make among members of the craft discriminations not based on differences relevant to the authorized purposes of the contract in conditions to which they are to be applied, such as differences in seniority, the type of work performed, or the competence and skill with which it is performed. Applying this principle to the case at bar, the collective agent had no power to make the amendment complained of.

In opposing this petition respondents will argue that the

amendment complained of was made to correct past discriminations against the members of the craft for whose benefit the amendment was made. This is to argue facts *de hors* the record which properly should appear, if at all, in an answer or other responsive pleading. Neither the uncontroverted allegations of the complaint nor any reasonable inference therefrom supports such argument. Further, if there were past discriminations, they are not chargeable to petitioner and his fellow employees who, under the Railway Labor Act, would be powerless to discriminate. Only the company or the exclusive statutory collective agent, or both, could do this. Also, if there were such discriminations, they were practiced in applying or interpreting an existing valid collective agreement and gave rise to grievances which should have been adjusted before the National Railroad Adjustment Board.

Conclusion

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

MARTIN J. PEARL,
Attorney for Petitioner,
204 Smith Building,
Jacksonville 2, Florida.

Jacksonville, Florida,
March 3, 1955.

APPENDIX A

IN THE
United States Court of Appeals
FOR THE FIFTH CIRCUIT

No. 14859

F. R. PELLICER, individually on behalf of himself as an employee of RAILWAY EXPRESS AGENCY, INC., ET AL.,

Appellants,

versus

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, ET AL.,

Appellees.

Appeal from the United States District Court for the Southern District of Florida.

(December 9, 1954.)

Before HOLMES, BORAH, and RUSSELL, Circuit Judges.

HOLMES, Circuit Judge: This is an action by a railway-

agency employee to have enjoined as unlawful an amendment to a bargaining agreement that modified his senority rights by integration of colored employees with other employees. The action was instituted in a state court and removed to the federal district court. The motion to dismiss was granted because the complaint failed to state a cause of action. The question presented is whether the amendment was unlawful under the Railway Labor Act and the federal Constitution.

The plaintiff contends that the amendment was invalid because it was enacted for the sole benefit of the colored employees. No claim of discharge, layoff, loss of promotion rights, or the like, is alleged to have resulted to plaintiff or to the employees whom he represents. The substance of plaintiff's claim is that any amendment or modification in the provisions of a collective bargaining agreement must operate equally as to all members of the craft without discrimination, and that all must be treated in an identical manner. There is no charge of fraud or bad faith. The law is that changes effectuating differentiations or unequal treatment among employees are not invalid unless some clearly expressed public policy is contravened; and that in the absence of fraud or bad faith the courts will not inquire into the motives which prompt such changes, nor will they substitute their judgment for that of the bargaining agency on the reasonableness of the modifications.

This appeal is from a judgment rendered by the United States district court for the Southern district of Florida, in which an opinion of exceptional merit was written by Judge Bryan Simpson. The case is reported in *Pellicer* v. *Brotherhood of Ry. and S. S. Clerks, etc.*, 118 Fed Supp. 254. It would be a work of super-erogation on our part to attempt to embellish this opinion or to add anything to it. For the reasons therein stated; the judgment appealed from should be affirmed; but there is one paragraph in the opinion so

strikingly in point that, for the sake of emphasis, we think it should be quoted in full:

> "Here, except for the claim amounting to no more than a conclusion of law that the amended agreement was arbitrarily entered into and is arbitrary and discriminatory in its terms and effects, there are no factual allegations in the complain that the Express Company and the Brotherhood did not in good faith negotiate and make the seniority changes effecuated by the amended agreement. It would indeed turn the blade inward' were this Court to hold invalid and unlawful that which appears on the face of the complaint and attached exhibits to be a good faith effort on the part of the Brotherhood and Express Company to comply with pronouncements of the Supreme Court in the racial discrimination cases." 118 Fed. Supp. 257.

Finally, the amendment to the bargaining agreement did not amount to a discrimination against the white employees, but merely rectified an existing discrimination against the colored employees, the effect of which as to the former was *damnum absque injuria*. Consequently the judgment appealed from is affirmed.

AFFIRMED.

APPENDIX B

Judgment of United States Court of Appeals for the Fifth Circuit - Extract from the Minutes of December 9, 1954.

Judgment

F. R. PELLICER, individually on behalf of himself as an employee of Railway Express Agency, Inc., et al.,

No. 14859 versus

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, et al.

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellants, F. R. Pellicer, individually on behalf of himself as an employee of Railway Express Agency, Inc., and others, be condemned, in solido, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

ACKNOWLEDGEMENT OF SERVICE BY ATTORNEYS FOR RESPONDENTS

Receipt is hereby acknowledged of four (4) true copies of the foregoing printed petition for writ of certiorari, on this the ..... day of March, A. D. 1955.

Attorney and of Counsel for Respondents, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and Silas McKinney individually and representatively

400 Professional Building,
Jacksonville 2, Florida.

Receipt is hereby acknowledged of six (6) true copies of the foregoing printed petition for writ of certiorari, on this the day ..... of March A. D. 1955.

Attorney and of Counsel for Respondent, Railway Express Agency, Inc., a corporation

1712 Barnett National Bank Building,
Jacksonville 2, Florida.